

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA RAY FISHER and
JUSTIN ANTHONY FISHER,

Defendants.

Case No. 2:17-cr-00073-APG-EJY

ORDER

Pending before the Court is Justin Fisher's Motion for Transcripts. ECF No. 256. In his Motion, Fisher states he is "currently preparing a 28 U.S.C. § 2255 petition on issues relating to his plea. *Id.* at 3. As previously explained to Defendant, his request is premature as access to copies of the record will not be considered until a district or appellate judge certifies the habeas petition may proceed. 28 U.S.C. § 753(f) ("Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal."). *See also United States v. Rodriguez-Lopez*, Case No. 8:17-cr-42-T-17CPT, 2019 WL 9047181, at *1 (M.D. Fl. July 30, 2019) *citing United States v. MacCollom*, 426 U.S. 317, (1976) (any request for a free transcript prior to the filing of a section 2255 complaint is premature); *Walker v. United States*, 424 F.2d 278, 279 (5th Cir. 1970) (holding that "only where a [habeas] petitioner ... has been granted leave to proceed in forma pauperis and his application is pending before the court is that petitioner entitled to be furnished copies of court records without cost.").

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Transcripts (ECF No. 256) is DENIED without prejudice as premature

Dated this 17th day of January, 2024.


ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE